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November 4, 2005

Ms. Rini Ghosh  
Section of Environmental Analysis  
Surface Transportation Board  
ATTN: Finance Docket No. 34284  
1925 K Street, NW  
Washington, DC 20423-0001

received  
11/14/05

Re: Finance Docket 34284  
Proposed Vulcan Materials/Southwest Gulf Railroad Rail Line  
Medina County Texas

Dear Ms. Ghosh:

This letter will transmit an important presentation regarding flash flooding in the project area. It also provides additional publicly available data on physically feasible grades for the agency to take note of and consider when establishing feasibility criteria for alternatives in this proceeding. Finally, this letter concludes with thoughts on the present state of this proceeding, and encloses a letter published in this week's *Hondo Anvil-Herald*.

"Flash Flood Alley" and Medina County

We have been searching for a way to assist your agency in better understanding the flash flood risk in Medina County. As you know, flash flood risk is an important topic that needs to be addressed as part of the Environmental Impact Statement in this proceeding. We want to give you a better idea of how it works, why it happens in our area, and specifically what happens, and why the rapid, unpredictable rise and movement of waters in our nearby creeks is of such concern.

The project area—indeed, all of Medina County—is part of a region known as Flash Flood Alley. Recently, the federal government has partnered with state and local agencies to create a series of materials and data hosted on their website, [Floodsafety.com](http://Floodsafety.com). Specifically, they have produced a short DVD video, "Flash Flood Alley," that describes flash flooding in our area of central Texas, along with an accompanying DVD-ROM that contains the video, historic flood data up to the present day, and articles. "Flash Flood Alley" was sponsored and produced by the United States Geological Survey (which monitors and gauges many of the streams in the area), the State of Texas, the San Antonio River Authority (the basin just to the east of Medina County), the cities of

Austin and Dallas, and local flood control districts. Numerous representatives of these agencies appear in the video. We have enclosed copies of it for review by you and all appropriate SEA staff.

We strongly urge you to view the DVD video presentation, which runs just under 1 hour, with your staff in the near future.

As a guide, we will provide a short summary of each of the sections of the video, which we recommend viewing on the DVD, and then we will summarize the data on the DVD-ROM.

#### Video Chapter 1

Texas leads nation in flood damage and deaths annually. The extensive damage history of flash flooding in Central Texas opens the video, which then describes why areas like Medina County are flood prone due to weather patterns. The video describes an example of severe river flooding to the east of our area. While we are obviously not claiming the 7-mile wide super-flood on the Guadalupe River will occur in the project area, the video makes clear that such massive scale downstream impacts are aggregations of many upstream floods in Hill Country canyons and washes.

In the interviews with flood victims, you will notice some similarities to Hurricane Katrina, and some important differences. These citizens received no warning. The control structures in their communities failed. They could not depend on the mapped floodplain. And they experienced a total loss of their biggest investment, their homes.

In Quihi, the proposed development is not homes – the homes in the project area are protected and were built up out of the floodplain. Vulcan's quarry and rail line are the new developments that are failing to plan for flood impacts.

#### Video Chapter 2

Documented catastrophic events dot the state, including Medina County, extending hundreds of miles in all directions around it. Medina County is in "Flash Flood Alley" - the most flash flood prone region in the United States according to the National Weather Service. Damaging storms in the Texas Hill Country result in canyon and wash flooding, and assumptions surrounding downstream flood prevention in the cities are based on that fact.

The nearby record US point rainfall that MCEAA first mentioned in its scoping comments is documented in this section of the video, along with other data.

This section of the video underscores that not all 100 year floodplains on FEMA floodplain maps are accurate, and that new development often tries to downplay the existence of a flood hazard rather than confront it and design for it.

Again, in our case, the proposed development is not homes – the homes in the project area are protected and were built up out of the floodplain. Vulcan's quarry and rail line are the new developments that are failing to plan for flood impacts.

#### Video Chapter 3

Catastrophic rainfall events can occur anywhere in Texas, particularly in Flash Flood Alley, which includes the Nueces Basin of which the project area is a part. "Even the most arid lands are

not immune,” the video states, using the extreme example of Sanderson, Texas, some 250 miles to the west of Medina County. This once again puts the lie to Vulcan’s constant self-serving assertions that Medina County does not experience severe floods.

Even unmarked streams and crossings are deadly in flash flood conditions. The story of Sharon Zambrzycki’s experience at such an unmarked crossing on Brushy Creek, west of Austin, is particularly applicable to the crossings along Quihi and Elm Creeks in Medina County. The video notes that “12 to 18 inches of water across a roadway can float a vehicle.” That situation routinely occurs along the creeks in the project area during even moderate rains.

A representative of the National Weather Service describes the Texas Hill Country as “the most flood prone area in the country.” The video painstakingly documents the naïve claims of skeptics and developers—claims that the locals and old timers “didn’t know what they were talking about,” only to have the skeptics face reality when the floods came.

Even a surge on a small tributary can overwhelm a town, as in the case of Peach Creek and Cuero. Peach Creek was a USGS gauged stream that became an ungauged stream when funding ran out, not unlike the streams in the project area. The lack of gauged data is not an excuse to avoid the necessary analysis, particularly in the face of the serious risk faced by Medina County.

When unanalyzed and unmitigated, poor development practices shift flood risk and cost onto landowners, as well as unquantifiable psychological trauma. That is what must be prevented in Medina County.

#### Video Chapter 4

Mentioned in the DVD-ROM data but not the video, is the near-failure of the Medina Dam, just to the north of the project area, in July 2002. This near-failure resulted when flash flooding filled Medina Lake to capacity in record time. The near-failure of the Medina Dam is analogous to the overtopping of Canyon Dam described in this segment of the video.

The events in the video are events you do not hear about because they don’t always make the national news. It may surprise you, after watching the graphic video, to learn that so many disasters of this magnitude occurred before Tropical Storm Allison in 2001, and before Hurricanes Katrina and Rita this year. Part of the reason for that is the collective denial, at all levels of government, that these events are happening and must be analyzed, planned for and resolved in the course of licensing new projects. This denial is fed and abetted by applicants who do not want to take responsibility for the impacts of their proposed developments.

The foundation failure of Linda Coble’s house is emblematic of an inadequate permitting process. It is a small leap from the faulty nails on her foundation to the absurd trestle bridges and floodplain berms proposed by Vulcan.

#### Additional notes on the video

Finally, the cruel financial ruin experienced by many in the video is emblematic of a temporary shift in our society that is rapidly undermining itself and coming to an end, and which, in any case, we will not allow to obstruct the law in this proceeding. That shift is a shift in risk and cost, in this case from government and proposed upstream development on to individuals with existing good faith investments.

You can see it in the story of the Lopez family. They lived over a mile from the river, were not in the floodplain, and had no flood insurance. Their house had never flooded, they received no warning, yet their property was a total loss. The husband later lost his job because of a health condition (Why couldn't his employer accommodate it? Was it even legal for them to fire him on that basis?), and now likely lacks health insurance to treat that condition. He's probably lucky if his company hasn't raided his pension yet, and his wages were probably flat long before he was fired. The Lopez family must now choose between rebuilding from the loss of their biggest investment, their home, and their other expenses like health care and college for their daughter. They will receive scant public financial support, because there is no safety net anymore.

We mention all of this because there is a waning element inside the Beltway that thinks it fashionable to blame the Lopez family for their recent troubles – for the flood loss, for the job loss, for the unforgivable financial choices they must now make to preserve their mere health and safety, much less their property, in the richest country on earth. Yet unlike some of the others in the video, the Lopez family did not come to the hazard. They did not build or move into in the mapped floodplain. They did everything a reasonable person would do. They thought they could rely on existing flood protection and planning mechanisms, as well as private property rights, to protect them. A waning element inside the Beltway denigrates this reliance and weakens its legal foundations. Then, they hold it up as proof that government can't plan ahead and protect private property from disasters, while absolving irresponsible developers under a doctrine of "common enemy" and preemption. This turns the lawless into the blameless.

This is part of why MCEAA finds Vulcan's lawless refusal to analyze flood impacts from the quarry and rail line so offensive, and why the agency should as well. Absent a federal forum, Vulcan would have to resolve these issues with the landowners and local government directly in order to obtain condemnation power. The federal forum, the STB licensing process, purports to remove that leverage and substitute it with the Environmental Impact Statement of the National Environmental Policy Act, to inform citizens and all levels of government. While Vulcan hails the leverage of a purported federal common carrier license, it refuses to provide adequate information to the agency to satisfy NEPA obligations. When the floods come, Vulcan will blame everyone but itself, and fight landowner inverse condemnation and trespass claims as long as its deep pockets will allow. Assuredly, Vulcan would hold up the currently inadequate EIS, which doesn't even analyze flood impacts, to claim absolution, while simultaneously claiming the events never could have been foreseen. In short, Vulcan would blame everyone, including the citizens of Quihi who built their homes out of the floodplain, and blame anyone, except, of course, itself. To anyone at the agency who watched coverage of Hurricane Katrina and its aftermath, we don't have to spell it out any further—you know exactly what we are talking about.

Many of the people of Quihi and rural Medina County have a lot of pride in their heritage and their community. But many of them have a lot in common with the Lopez family in the video, some more than maybe they would admit. The temporary shift in our society that made it okay to shift risk and cost onto working families, and wrapped together corporate fraud and government negligence under a banner of false individualism, is coming to an end. The floods of the last decade in Texas have had an economic cost. Don't doubt that they have also had a social cost. If Vulcan thinks that it can evade a comprehensive up-front analysis of flood risks, and instead force the Quihi

community to bear that unanalyzed, unmitigated risk, we have one message to send: Over our dead bodies.

Again, we hope you will view this presentation with your staff in the near future. We recommend the DVD for the best quality video viewing.

#### DVD-ROM Data

In addition to yet more documentation corroborating MCEAA's prior comments to the agency regarding flood risk, an extensive array of historical and current flood data appears on the DVD-ROM. You may also access this data, and the video segments, from the Floodsafety.com website.

Most of the data is on the Regional Programs – Texas page. You can browse through all of the sections on that page. The most useful is likely the USGS historic flood data page. This will give you a more robust picture of what is happening around the project area, which is in the Nueces River basin. Unfortunately, as you may know, the gauge data from within the project area is historic in nature and was only collected for a few years. We wish that it could be a better resource. Overall, however, these pages, combined with knowledge of the Corps of Engineers' hydrologic modeling software (<http://www.hec.usace.army.mil>) and the availability of data (including radar rainfall data and design storms) from the National Weather Service and local agencies such as the Edwards Aquifer Authority, Nueces River Authority, and San Antonio River Authority, should drive home the point that this risk is something that is modeled all the time by our local governments. The situation with Vulcan's projects requires more than a simple eyeballing of the risk.

The "Texas Challenge" in the Interactive Segments of the Media and Map Gallery section provides more detail on why severe storms impact Flash Flood Alley, and gives another geographic distribution of historically severe storms (note that the "Medina" point rainfall record is misplaced on this presentation's map, however. It should be in Medina's neighboring county, Bandera, not in South Texas).

We have also learned from the Medina County floodplain administrator that FEMA plans to remap the floodplains in Medina County with up-to-date technology within 2 years. As you will recall, the existing FEMA floodplain maps for the project area were completed in 1980.

#### Alternatives: Feasible Grade Data From Other Ongoing Proceedings Must Be Considered

In our letter dated October 5, 2005, our attorney discussed the need for the agency to establish physical feasibility criteria for the proposed rail line. These criteria would allow the agency to complete an adequate alternatives analysis, rather than relying on unfounded conclusory statements about potential impacts and cost to eliminate otherwise viable alternative routes.

One of our consultants has recently alerted us to data already within the agency's possession, and other data easily available to it, that further support the physical feasibility of the Medina Dam Route ("Original MDR") and Medina Dam Alternative ("MDA").

In each of those routes, there is a short (approximately 1 mile, a maximum of just under 100 feet in vertical gain) uphill portion south of Quihi Creek that requires grade adjustment, not unlike other sections of proposed alternatives in this proceeding.

Vulcan states that maximum permissible grade is 1.0%. Leaving aside the run-through power issue discussed in our October 5, 2005 letter, it is clear that a lower permissible grade increases the amount of cut and fill required. Vulcan also insinuates, but has never shown, that a loaded train leaving the quarry would be unable to ascend this segment, at whatever grade, despite more than two and a half miles of level acceleration.

Data from other rail lines around the country and from other proceedings currently before the agency disprove Vulcan's baseless assertions. A further description follows the chart below.

**Chart 1: Feasible grades and cut and fill volumes on other rail lines**

	Maximum feasible grade after cut and fill	Feasible cut and fill volume
Tongue River Railroad III, Montana 17 mile segment Four Mile Creek Alternative Loaded coal trains	2.31%	10.3 million cu yds
Tongue River Railroad III, Montana 17 mile segment Western Alignment Loaded coal trains	0.95%	17.0 million cu yds
Department of Energy Yucca Mountain, Nevada Caliente Corridor Nuclear waste caskets	2.0% (some areas are as high as 3.2-4.4% pre-cut and fill)	Unknown, easily in the millions of cu yds
Vulcan Medina Quarry 11.24 mile segment Modified Medina Dam Route Loaded aggregate trains	1.0%, alleged	729,778 cu yds, allegedly infeasible
Vulcan Medina Quarry 9.01 mile segment "SGR Eastern Route" Loaded aggregate trains	1.0%, alleged	336,566 cu yds, allegedly infeasible

**Chart 2: Existing grades after cut and fill on major North American rail routes<sup>1</sup>**

<i>Route</i>	<i>Grade</i>
Canadian Pacific – Rogers Pass	2.2%
Union Pacific – Moffet Tunnel	2.1%
Cajon Pass, San Bernardino Mtns	2.2%
Donner Pass	2.2%
Proposed DOE Yucca Mtn Caliente Corridor	2.0%
Union Pacific – Hondo east to Houston	1.2 to 1.4%

The data for the Tongue River Railroad III STB construction proceeding (FD\_30186\_3) comes straight out of the Draft EIS dated December 6, 2004. The attorney for the Tongue River Railroad, making the grade feasibility arguments, is the same attorney that represents Vulcan in this proceeding.

Ironically, in the Tongue River DEIS there are two preferred alternatives, one with a grade of 0.95% and the one with 2.31%. But not surprisingly, the cut and fill for the first, more gradual route, is much larger, 17 million cubic yards, than for the other, steeper route, 10.3 million yards. The steeper one requires more fuel cost, but the more gradual one requires more up front cost.

It seems clear to us that neither of those cost bases was a legitimate ground for eliminating these otherwise physically feasible alternatives, and the agency agreed. It did not seem to make any difference in that case which direction the trains were traveling loaded and unloaded with coal, because in the DEIS the agency examined the risks and costs in both directions. In short, there is no factual distinction between physically feasible grades in that case and physically feasible grades in this case; at least not one that passes the straight face test.

Additionally, the segment in this case requiring grade modification is so short, compared to the millions of cubic feet of earthwork required in Tongue River III, that the existence of a legitimate cost objection seems impossible. This is particularly true given that the applicant's revenue projections for the line are wholly dependent on a quarry whose output it will solely control.

The data in Chart 2 shows that steeper post-cut and fill grades exist on major rail lines throughout North America, and are currently being proposed for rail lines that will handle nuclear waste caskets of comparable weight and far greater risk than the aggregate to be handled here. Certainly one feature of the segments in Chart 2 is that they may require more operating power (engines) or other operational constraints. At the same time, because the segment requiring grade adjustment along the Original MDR and MDA routes is so short, and because two and a half miles of open track separate the loading loop from the grade, those concerns may well be overblown. In any case, as in Tongue River III, they may not necessarily make an otherwise viable alternative an infeasible one. That is your job, for you all to decide.

<sup>1</sup> Source: U.S. Department of Energy, Office of National Transportation. <http://www.ntp.doe.gov/tec/TECAgenda-Apr4-2005.pdf> (Presentation of Gary Lanthrum, Director, slide 10)

The point is, however, that the agency has not yet made that decision, in large part because a consistent set of physical feasibility criteria to evaluate alternative routes against remains undisclosed. That the issue still exists, and the agency has not dealt with it, is because Vulcan has misrepresented the physically feasible post-cut and fill grade, which has the side effect of increasing the necessary cut and fill, and thus the overall cost.

The potential grade on the Original MDR and MDA routes remains unknown, but it is clear that there are post-cut and fill opportunities between 1.0 and 2.0% or higher, over a very short distance, that may well make the Original MDR and MDA feasible under a consistent set of physical feasibility criteria.

### General Observations

As noted above, one of our consultants has long been aware of both the Tongue River III proceeding currently before the STB, as well as the Department of Energy's Yucca Mountain Caliente Corridor rail construction project, which is not (yet). As you probably know, back in early 2004, there was a lot of discussion over whether the STB should take jurisdiction over the Caliente Corridor. The House Committee on Transportation and Infrastructure's Railroads Subcommittee held a hearing about it on March 5, 2004, at which now-outgoing STB Chairman Nober testified.

To call it what it was, at the hearing and behind the scenes, there was a delicate dance between STB and DOE and the rail community. We are well aware of the fact that the Yucca Mountain rail line potentially raises the jurisdictional "what is a true common carrier?" issue, federal preemption vs. local control issues, and significant environmental impact issues (including flooding<sup>2</sup>).

The result was DOE issuing a Record of Decision selecting the Caliente Corridor in April 2004, where DOE made the decision to not submit the project to STB licensing. Nevada eventually sued and the question of whether DOE's statutory authority permits it to avoid the STB process will soon be decided by the Court of Appeals for the D.C. Circuit.

Regardless of how that case turns out, we recognize that the ultimate fate of Yucca Mountain rail construction is connected in so many ways to the core, practical issues that this proceeding raises.

There is something fundamentally wrong with the rail licensing system in this country when a 400 mile rail line to serve the Yucca Mountain nuclear waste project, potentially the most dangerous national security and environmental impact situation in the country's history, does not come before (indeed, arguably deliberately avoids) the agency that issues rail licenses, the STB; Yet, at the same time, the STB is conferring licenses on non-rail entities for 7-10 mile spurs to give them condemnation power and to circumvent local political responsibility for land use planning and environmental impact mitigation.

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<sup>2</sup> Steve Curran. "Recent Floods Raise Questions About Yucca Rail," Las Vegas Sun. Feb. 11, 2005. <http://www.lasvegassun.com/sunbin/stories/special/2005/feb/11/518277272.html>

As we note above, absent a federal forum, Vulcan would have to resolve these issues with the landowners and local government directly in order to obtain easements through voluntary sale. The federal forum, the STB licensing process, purports to remove that leverage and substitute it with the Environmental Impact Statement of the National Environmental Policy Act, to inform citizens and all levels of government.

Yet Vulcan refuses to participate forthrightly in the existing NEPA process and complete the disclosures required by federal law. The leverage of local communities—control over their property, and impacts to that property—is eviscerated by the federal license, but then Vulcan refuses to comply with the disclosure process under NEPA that is supposed to replace that leverage and inform decisionmakers at all levels of government. The federal agency becomes the last line of defense. The result is the (arguably unnecessary) federalization of what are essentially local land use and drainage conflicts.

Because rail lines require land, the appropriate conceptual relationship is that of a triangle, between railroad-shipper-community, not a binary relationship between shipper and railroad where one is constantly trying to out leverage the other in a vacuum.

The most urgent issue for industrial shippers today is obtaining rail access and will only become more so as oil prices increase. Rail access at multiple facilities nationwide gives the shipper leverage over the railroad to control costs where competitive service is not available. We have a national rail backbone in place. The urgent national need is by and large not for surveying new routes through the Rockies. It is for spur lines between 2 and 15 miles in length that will likely benefit only the facilities they extend to, just like Vulcan's quarry.

Yet when the demand for rail construction increases in the coming years, is Vulcan's process seriously going to be the template for future licensing? Because if it is, there's no way the STB will be able to license a sufficient number of rail lines to meet the national need. This proceeding, for an 8 to 15 mile rail line, has been ongoing for over 3 years, and the applicant has been working on the overall proposal, including the connected quarry, for 6 years, since 1999.

It is a national embarrassment that it takes so long to license new rail lines. We do applaud the agency for requiring the necessary information from Vulcan, regardless of the delay, but that downplays the larger point, which is the applicant's refusal to address local concerns at the start. Let's be perfectly clear about why the licensing process takes so long: Recalcitrant applicants like Vulcan refuse to deal up front with local landowners and local representatives under state law. They then enter the federal process and drag their feet on disclosure to put pressure on the agency, creating a classically cynical "Problem-Reaction-Solution" situation. The alleged "problem" is that rail licensing under NEPA contains unwanted input from local communities; the "reaction" is to avoid disclosure of environmental impacts and thus avoid responsibility for mitigation, and the "solution" is to spawn more litigation and more delay, and to lobby for further exemptions (and arguably, unconstitutional preemption power) under federal law that weaken local community input and oversight even more.

Throughout the NEPA process, MCEAA has only raised the essentially same fundamental concerns as its County-level representatives, though in more detail. It has only raised the same

concerns that its members would have raised—and indeed, that any landowner would raise—when deciding whether to voluntarily sell easements across their land in the face of a combined quarry-rail project in their community and watershed. The federal licensing process has transferred these concerns to a federal forum, to be resolved, to the extent the “regulation” of railroads is concerned, under federal law.

Yet the only reason Vulcan and other paper-railroad applicants like it are in a federal forum is to obtain a federal common carrier license that purportedly gives them instant condemnation power under state law, removing local landowner leverage and local political accountability, and necessitating a replacement NEPA process.

Why?

Why do we need to keep pretending these private paper railroad lines are common carriers? Why do we need to keep pretending these private paper railroad lines are interstate commerce, when we build state and county roads of similar length every day? Why does the federal STB need to license these private paper railroad spur lines? Why do the shippers who want rail access stupidly think that they will get a better deal after 10 years of litigation than 10 months of negotiation? That approach might make sense in an extractive, neo-colonial economy, where wealth gets taken out and shipped elsewhere, regardless of what the locals want; perhaps it even made sense when we were first building the railroads and settling the West. We do not live in that world anymore, we live in a different world today.

There is no good reason why we shouldn't call private paper railroads like Vulcan's what they truly are. That is, but for the refusal of paper railroad applicants to get off their horse and deal with local landowners up front instead foolishly trying to out-leverage them by creating “problem-reaction-solution” situations in the NEPA process, then trying to preempt state condemnation law with their federal common carrier license.

As Chairman Nober laid out the STB's position in his March 5, 2004 testimony:

Construction and operation of private track — which is not covered by the Interstate Commerce Act and not subject to any aspect of the Board's jurisdiction — does not require any regulatory authorization by the Board at all. While the term “private track” is not defined in the statute, Congress described private track as follows in its Conference Report on the ICC Termination Act: “[N]on-railroad companies who construct rail lines to serve their own facilities [exclusively]. . . are not required to obtain agency approval to engage in such construction.”

The courts and the Board have long recognized that wholly private operations conducted over private track are not subject to the agency's jurisdiction. This is so even when such operations are conducted by an operator that conducts common carrier rail operations elsewhere, if it operates on the private track exclusively to serve the owner of the track pursuant to a contractual arrangement with that owner. And, of course, the private track can connect to a common carrier line and the

national rail network. However, state and local laws and regulations are not Federally preempted with respect to construction of private track.

Currently the railroads have a lot of leverage over the shippers. They can force the shippers who want rail access to front all the costs of constructing the new line and acquiring land, then buy the federal common carrier license off the shipper and its paper railroad for pennies on the dollar once operation begins. The shipper eats the rest of the cost as part of the capital cost for the overall connected proposal. However, that leverage is a pricing power issue, not an access issue. The access issue plays into it, but only to the extent that the cost of obtaining access matters. What we are arguing is that the notion that proceeding under federal law is more cost effective, rather than dealing straightaway with local landowners and local governments under state law, may be false. And Vulcan's actions in this proceeding prove it and serve as case study #1.

Unless it holds Vulcan's feet to the fire on NEPA, the STB process will not be an adequate replacement for the leverage that private property owners have over a private, non-common carrier under state law. Otherwise, the clear answer is to force private paper railroad projects like Vulcan's to remain subject to state law, and not to issue a federal common carrier license. Only then will the applicant be forced to do an adequate preliminary investigation ahead of time, and meet the community's concerns up front, to convince them to release easements at a fair price, without litigation. Only then will we have political responsibility at the local level for enforcing laws like the County Floodplain Ordinance and County land use plans, as well as State Historic Preservation and Agricultural Land Use laws. And guess what: when it happens, it will still be faster and cheaper than the federal process and all its litigation.

There are three ways to get there from here. First, the STB could clearly disclaim jurisdiction over private paper railroads where a true railroad or rail operator is not even involved in the consortium or partnership applying for the license, and where the line would solely serve a facility owned by the applicant. We are unsure how many previous STB construction cases to a solely-served facility lack a true rail partner in the application, as Vulcan's does, but the Yucca Mountain case certainly presents a unique opportunity, one we do not expect the state of Nevada to pass up if it arises.

Second, Congress could more clearly remove jurisdiction and/or alter the balance between shippers, carriers, and communities.

But the most likely scenario is the one that relies on common sense and the shippers getting wise to the practical concerns of the communities they seek rail access in. The best solution is most often the one that doesn't have to resort to creating winners and losers by testing the bounds of the law. The only answer to *Cui bono?* under the current system is attorneys, consultants, and engineers.

For what purpose can anyone in their right mind defend what Vulcan is doing, and the cost and time involved? If the choice is A) running a federal licensing process that takes 10 years to build a rail line because of the litigation, or B) forcing companies like Vulcan to do what they should have done six years ago (investigating ahead of time) by subjecting them to the power of private property owners who cannot lose their land to a private rail line under state law, it seems the

agency should push cases like Vulcan away, get out of the local land use business, get on to the big construction cases like Yucca Mountain that matter, and reap the national benefits of having more shippers obtaining rail access sooner rather than later.

\* \* \*

So that it is perfectly clear, our observations above should not be interpreted as wavering one inch from our previous statements. We fully support the agency in its attempts to obtain further information from the applicant. We are in no rush for Vulcan to realize what has been plain to us from day one. We will continue to participate fully and pass on information to the agency as we obtain it and respond to it. We are only as ready to negotiate and litigate with Vulcan as we have been from the beginning, as private landowners impacted by this project, before Vulcan ever entered a federal forum.

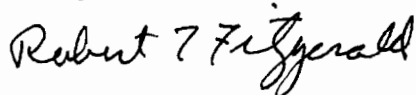
It is just that we find it embarrassing when corporations think that they can evade community and landowner leverage by creating paper railroads to invoke the jurisdiction of federal forums, and then, once in that forum, try to have it both ways and avoid the leverage of the federal environmental disclosure process under NEPA. Anyone can see that type of having-your-cake-and-eating-it-too is not sustainable, and is not going to last for long. Only the most binary railroad-shipper worldviews can project that illusion for long. It is clear to us that a resurgence of the railroad-shipper-community triangle, or the railroad-shipper-community-agency tetrahedron, if you must, is required if the NEPA process is to be taken seriously as a replacement for landowner leverage under state law.

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MCEAA and the Quihi community grow stronger each day that Vulcan continues to appeal to "facts" it has never shared with the agency, local government, or the public. The enclosed letter to the editor from landowners and MCEAA members Tom and Mary Walpole, in this week's *Hondo Anvil-Herald*, sums up the unity of our community on these issues.

Thank you for your work to date on the NEPA process. Please place a copy of this letter and the DVDs in the administrative record for this proceeding.

Sincerely,



Dr. Robert T. Fitzgerald, President  
MCEAA, Inc.

*MCEAA, Inc., for your Home, Health, and Heritage*

## Your turn

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Email: anvil@hondo.net Fax: (830) 426-3348

### *Still waiting for facts from Vulcan*

Dear Editor:

As a landowner living in the Medina County flood plain, I feel a need to respond to Tom Ransdell's Sept. 1 letter to the editor.

He stated, "These include the group's belief that this project, unlike rail projects throughout the world (and Texas) will cause cataclysmic flooding. In fact, we all know that rain falls and trains move and the world keeps turning, without disastrous results."

Mr. Ransdell; If the flooding is on your property, it is a disaster! Vulcan, give us the facts about the quarry and rail line as it affects flooding in the existing flood plain. Construction of a quarry and rail line with berms and trestles will change the flooding patterns. Can you prove otherwise?

Tom Ransdell's letter is just more promises about getting the facts, but never coming up with them, even after six years. What a waste of time.

Vulcan's quarry-rail project is supported by one of the most costly, ineffective, and wasteful public relations and lawyering operations in the history of federal licensing and Ransdell's letter is more proof of this. Who in their right mind would represent

to the public, in their local newspaper, that the "facts" are being found in some mysterious, opaque, behind the scenes process when these facts have never been publicly disclosed in the ongoing public process required by law? Has the Surface Transportation Board ruled out a flood risk? Has this newspaper reported the lack of a flood risk? Have the people of Medina County ruled out a flood risk? The questions keep coming, six years on, from the agencies and the citizens. But all Vulcan can do is point to "facts" it doesn't have, and consequently has never shared with the citizens, the media, and local, state, and federal government.

Anyone in Medina County who has questions and concerns about the proposed quarry-rail line project should make it their business to contact the Medina County Environmental Action Association (MCEAA) at 830-741-5040. Flooding is the tip of the iceberg. We want answers about our aquifers, our wells, our county roads, railroad safety and operations. Basic questions that remain unaddressed while Vulcan and their expensive lawyers crank out more meaningless "facts".

Tom and Mary Walpole  
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Note to #EI-1750:

The information on the two DVDs submitted with this letter may be obtained through the website [floodsafety.com](http://floodsafety.com).